

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
HECTOR IRIZARRY,

Plaintiff,

VERIFIED COMPLAINT

-against-

THE CITY OF NEW YORK, THE NEW YORK
CITY POLICE DEPARTMENT and POLICE OFFICER
ANDREW ULICH SHIELD NO. 001681,

Defendants.
-----X

Plaintiff **HECTOR IRIZARRY**, by his attorneys, **PHILLIPS, KRANTZ & ASSOCIATES, LLP**, complaining of the Defendants, respectfully alleges, upon information and belief, as follows:

FIRST CAUSE OF ACTION

Violation of Rights Secured by 42 U.S.C. §1983 and the
Fourteenth Amendment to the United States Constitution for
Seizing, Detaining, Arresting, Imprisoning, Prosecuting
and Assaulting the Plaintiff

1. At all times herein mentioned, Plaintiff **HECTOR IRIZARRY** was, and still is, a resident of the County of Bronx, State of New York.
2. The cause of action alleged herein arose in the County of Bronx, City and State of New York.
3. Defendant **THE CITY OF NEW YORK** is a municipal entity created and authorized under the laws of the State of New York. It is authorized by law to maintain a police department which acts as its agent in the area of law enforcement and for which it is ultimately responsible. Defendant **THE CITY OF NEW YORK** assumes the risks incidental to the

maintenance of a police force and the employment of police officers as said risk attaches to the public consumers of the services provided by **THE NEW YORK CITY POLICE DEPARTMENT**.

4. Defendant **THE NEW YORK CITY POLICE DEPARTMENT** is a municipal entity created and authorized under the laws of the State of New York. It is authorized by law to carry out all police functions for the Defendant **THE CITY OF NEW YORK** and assumes the risks incidental to the maintenance of its police force and the employment of police officers.

5. Defendant **POLICE OFFICER ANDREW ULICH** is and was at all times relevant herein an officer, employee and agent of **THE NEW YORK CITY POLICE DEPARTMENT**, a municipal agency of Defendant **THE CITY OF NEW YORK**.

6. At all times relevant herein, Defendant **POLICE ANDREW ULICH** was acting under color of state law in the course and scope of his duties and functions as an agent, servant, employee and officer of **THE NEW YORK CITY POLICE DEPARTMENT** and otherwise performed and engaged in conduct incidental to the performance of his lawful functions in the course of his duties. He was acting for and on behalf of **THE CITY OF NEW YORK** and **THE NEW YORK CITY POLICE DEPARTMENT** at all times relevant herein with the power and authority vested in him as an officer, agent and employee of **THE NEW YORK CITY POLICE DEPARTMENT** and incidental to the lawful pursuit of his duties as an officer, employee and agent of **THE NEW YORK CITY POLICE DEPARTMENT**.

7. That on or about December 15, 2010, Plaintiff **HECTOR IRIZARRY**, was peacefully conducting himself at or about Fail Street walking toward Aldus Street, Bronx, New York.

8. That at said time and place, Defendant **POLICE OFFICER ANDREW**, without a warrant, cause or provocation did stop, detain and arrest the Plaintiff **HECTOR IRIZARRY**.

9. That at said time and place, Defendant **POLICE OFFICER ANDREW ULICH SHIELD NO. 001681**, without a warrant, cause or provocation did assault the plaintiff by using unnecessary and/or excessive force on the plaintiff.

10. The conduct and actions of Defendant Police Officer **ANDREW ULICH** and other unidentified New York City Police Officers, acting under color of law, in falsely seizing, detaining, arresting, prosecuting and assaulting the plaintiff, was done intentionally, maliciously and/or with a reckless disregard for the natural and probable consequences of their acts, was done without lawful justification, and was designed to and did cause specific and serious bodily, mental and emotional harm, pain and suffering in violation of the plaintiff's Constitutional Rights as guaranteed under 42 U.S.C. §1983, and the Fourteenth Amendment to the United States Constitution.

11. That as a result of the aforementioned occurrence, Plaintiff **HECTOR IRIZARRY** was caused to sustain physical injuries, mental and/or emotional distress, mental anguish, shock, emotional disturbance and psychic trauma and plaintiff had to extend money for care and legal expenses as well as damage and injury to his reputation, character and earning power.

12. By reason of the foregoing, Plaintiff **HECTOR IRIZARRY** has been damaged in a sum exceeding the jurisdictional limits of all lower courts.

SECOND CAUSE OF ACTION

Violation of Rights Secured by 42 U.S.C. §1983 and the
Fourteenth Amendment to the United States Constitution
by Failing to Protect the Plaintiff from Unconstitutional Harm

13. The plaintiff incorporates by reference the allegations set forth in Paragraphs 1 through 12 as if fully set forth herein.

14. The conduct and actions of Defendant **POLICE OFFICER ANDREW** and other unidentified New York Police Officers, acting under color of law, in failing to take any steps to protect the plaintiff from the unjustified and unconstitutional treatment he was receiving at the hands of the police officer defendants, was done intentionally, maliciously, and/or with a reckless disregard for the natural and probable consequences of their acts, was done without lawful justification, and was designed to and did cause specific and serious bodily, mental and emotional harm, pain and suffering in violation of the plaintiff's Constitutional rights as guaranteed under 42 U.S.C. §1983, and the Fourteenth Amendment to the United States Constitution.

15. That as a result of the aforementioned occurrence, Plaintiff **HECTOR IRIZARRY** was caused to sustain severe physical injuries, mental and/or emotional distress, mental anguish, shock, emotional disturbance and psychic trauma and plaintiff had to extend money for medical care and legal expenses as well as damage and injury to his reputation, character and earning power.

16. By reason of the foregoing, Plaintiff **HECTOR IRIZARRY** has been damaged in a sum exceeding the jurisdictional limits of all lower courts.

THIRD CLAIM

(Monell Claim Against the Municipal Defendants)

17. The plaintiff incorporates by reference the allegations set forth in Paragraphs 1 through 16 as if fully set forth herein.

18. At all times material to this complaint, the Defendant **CITY OF NEW YORK**, acting through its Police department and its Police Commissioner, had in effect de facto policies, practices, and customs that were a direct and proximate cause of the unconstitutional conduct of Defendant **POLICE OFFICER ANDREW ULICH** and other unidentified Police Officers, and of the resultant official coverup of the wrong and unconstitutional conduct of these officers.

19. These de facto policies, practices and customs include, inter alia: (a) the negligent failure to properly and effectively screen, hire, train, supervise, discipline, retain, transfer, counsel, and/or otherwise control police officers engaged in the excessive and unjustified use of force, particularly those police officers who are repeatedly accused of such acts: and (b) the police code of silence wherein police officers regularly coverup police use of excessive and unjustified force by telling false and incomplete stories, or by failing to report the use of excessive and unjustified force by police officers, inter alia, in sworn testimony, official reports, in statements to the Civilian Complaint Review Board ("CCRB") and the Internal Affairs Bureau, and in public statements, all of which are designed to cover for and/or falsely exonerate the accused police officers.

20. On information and belief, the Defendants **CITY OF NEW YORK** and **NEW YORK CITY POLICE DEPARTMENT**, negligently failed to properly and effectively screen, hire, train, supervise, discipline, retain, transfer, counsel, and/or otherwise control their police officers, including the defendant police officers herein, for their propensity for violence, including

excessive and unjustified force and restraint, lack of truthfulness, and for their failure to protect citizens from unconstitutional conduct of other police officers, thereby permitting and allowing the defendant police officers herein to be in a position to assault and/or excessively and unjustifiably restrain the plaintiff and to otherwise cause him injury and violate his federal and state constitutional rights, and/or permit these actions to take place with their knowledge or consent.

21. On information and belief, the defendants **CITY OF NEW YORK** and **NEW YORK CITY POLICE DEPARTMENT**, negligently retained Defendant **POLICE OFFICER ANDREW ULICH** and other unidentified police officers.

22. On information and belief, the defendant police offices herein have been the subject of prior civilian and departmental complaints of misconduct that gave notice to, or would have given notice to, the defendants that the defendant police officers herein were likely to engage in conduct that would violate the civil and constitutional rights of the public, such as the conduct complained of by the plaintiff herein.

23. On information and belief, the defendants **CITY OF NEW YORK** and **NEW YORK CITY POLICE DEPARTMENT** maintained an inadequate structure for risk containment and stress management relative to its police officers, and failed to create proper means of containing such risk and managing such stress. Inter alia, the structure was deficient, at the time of selection of police officers and thereafter during their employment, in its ability to evaluate and exchange information within the command structure about the performance of individual police officers; in its training of supervisory personnel to effectively and adequately evaluate the performance of an officer; and in its ability to otherwise put the command structure on notice that an individual or individuals were at significant levels of risk to the public at large or to specific segments thereof.

The effect of this was to permit police officers of the department to function at levels of significant and substantial risk to the public in general and to the particular.

24. As a result of the foregoing conscious policies, practices, customs and/or usages, defendants **CITY OF NEW YORK** and **NEW YORK CITY POLICE DEPARTMENT** have permitted and allowed the employment and retention of individuals as police officers whose individual circumstances place the public or segments thereof at substantial risk of being the victims of violent or racially motivated behavior. Such policies, practices, customs and/or usages are a direct and proximate cause of the conduct alleged herein and otherwise a direct and proximate cause of the injuries to the plaintiff herein.

25. As a direct and proximate result of the defendants' wrongful policies, practices, customs and/or usages complained of herein, the plaintiff has suffered physical, mental and emotional injury and pain, mental anguish, suffering, humiliation and embarrassment, both personally and professionally.

FOURTH CAUSE OF ACTION
Violation of Rights Under State Law

26. The plaintiff incorporates by reference the allegations set forth in Paragraphs 1 through 25 as if fully set forth herein.

27. By the actions described above, each and all of the defendants jointly and severally, have committed the following wrongful acts against the plaintiff, which are tortious under the laws of the State of New York:

- a. trespass on the person of the plaintiff,
- b. false arrest of the plaintiff,
- c. malicious prosecuting of plaintiff,
- d. negligence in causing injuries to the plaintiff,
- e. abuse of power
- f. intentional infliction of emotional distress upon the plaintiff, in that the,
- g. negligent hiring, screening, retention, supervision and training of defendant police officers by Defendant **THE CITY OF NEW YORK** and Defendant **THE NEW YORK CITY POLICE DEPARTMENT**;
- h. assault and battery defendants intended to and did cause the plaintiff severe emotional distress, and the defendants' acts were outrageous in the extreme and utterly unacceptable in a civilized society;
- i. conspiracy by the defendants to commit all of the above acts;
- j. violation of rights otherwise guaranteed to the plaintiff under the laws and

Constitution of the State of New York.

28. The foregoing acts and conduct of the defendants were the direct and proximate cause of injury and damage to the plaintiff and violated his statutory and common law rights as guaranteed him by the laws and Constitution of the State of New York.

29. That as a result of the aforementioned occurrence, Plaintiff **HECTOR IRIZARRY** was caused to sustain severe mental and/or emotional distress, mental anguish, shock, emotional disturbance and psychic trauma and plaintiff had to extend money for medical care and legal expenses as well as damage and injury to his reputation, character and earning power.

29. That as a result of the aforementioned occurrence, Plaintiff **HECTOR IRIZARRY** was caused to sustain severe mental and/or emotional distress, mental anguish, shock, emotional disturbance and psychic trauma and plaintiff had to extend money for medical care and legal expenses as well as damage and injury to his reputation, character and earning power.

30. That this action falls within one or more of the exceptions as set forth in CPLR §1602.

31. By reason of the foregoing, Plaintiff **HECTOR IRIZARRY** has been damaged in a sum exceeding the jurisdictional limits of all lower courts,

FIFTH CAUSE OF ACTION

Respondeat Superior Claim Under State Law

32. The plaintiff incorporates by reference the allegations set forth in Paragraphs 1 through 31 as if fully set forth herein.

33. The conduct of Defendant **POLICE OFFICER ANDREW ULICH** and other unidentified New York City Police Officer alleged herein, occurred while they were on duty and acting in and during the course and scope of their duties and functions as New York City Police Officers, and while they were acting as agents and employees of the Defendant **THE CITY OF NEW YORK** and Defendant **THE NEW YORK CITY POLICE DEPARTMENT**, and as a result Defendant **THE CITY OF NEW YORK** and Defendant **THE NEW YORK CITY POLICE DEPARTMENT** are liable to the Plaintiff pursuant to the state common law doctrine of respondent superior.

34. That prior hereto on January 14, 2011 and within the time prescribed by law, a sworn Notice of Claim stating, among other things, the time when and place where the injuries and damages were sustained, together with plaintiff's demands for adjustment thereof was duly served on the claimant's behalf on the Comptroller of the City of New York and that thereafter said Comptroller for the City of New York refused or neglected for more than thirty (30) days and up to the commencement of this action to make any adjustment or payment thereof, and that thereafter, and within the time provided by law, this action was commenced.

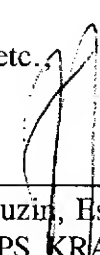
35. That a hearing pursuant to the General Municipal Law 50(h) was held on March 2, 2011.

36. By reason of the foregoing, Plaintiff **HECTOR IRIZARRY** has been damaged in a sum exceeding the jurisdictional limits of all lower courts.

WHEREFORE, Plaintiff **HECTOR IRIZARRY** demands judgment against the defendants on each cause of action, in an amount exceeding the jurisdictional limits of all lower courts in addition to punitive damages.

Dated: New York, New York
January 5, 2012

Yours, etc.,



Heath Buzin, Esq.
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HECTOR IRIZARRY
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New York, New York 10024
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ATTORNEY'S VERIFICATION

HEATH BUZIN, an attorney duly admitted to practice before the Courts of the State of New York, affirms the following to be true under the penalties of perjury:

I am an attorney at **PHILLIPS, KRANTZ & ASSOCIATES, LLP**, attorneys of record for Plaintiff, **HECTOR IRIZARRY** in the action within. I have read the annexed

COMPLAINT

and know the contents thereof, and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon facts, records, and other pertinent information contained in my files.

The reason this verification is made by me and not Plaintiff is that Plaintiff is not presently in the county wherein the attorneys for the Plaintiffs maintain their offices.

DATED: New York, New York
January 5, 2012



HEATH BUZIN